

ASSEMBLY BILL

No. 14

Introduced by Assembly Member Fuentes

December 1, 2008

An act to repeal and add Section 22659.5 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 14, as introduced, Fuentes. Vehicles: nuisance abatement: impoundment.

Existing law authorizes a city, county, or city and county to establish a 5-year pilot program that implements a procedure to declare a motor vehicle to be a public nuisance when the motor vehicle is used in the commission of specified crimes related to prostitution.

This bill would repeal the provisions authorizing the pilot program and would instead authorize a city, county, and city or county to adopt an ordinance declaring a motor vehicle to be a nuisance subject to impoundment for not more than 30 days when the motor vehicle is involved in the commission of specified crimes related to prostitution. The bill would require the ordinance to include specified provisions related to notice and provision of a poststorage hearing, and the release of the impounded vehicle.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22659.5 of the Vehicle Code is repealed.

1 ~~22659.5.—(a) Notwithstanding any other provision of law, any~~
2 ~~city, any county, or any city and county, may adopt an ordinance~~
3 ~~establishing a five-year pilot program that implements procedures~~
4 ~~for declaring any motor vehicle a public nuisance when the vehicle~~
5 ~~is used in the commission of an act in violation of Section 266h~~
6 ~~or 266i of the Penal Code or subdivision (b) of Section 647 of that~~
7 ~~code, and there is a conviction of Section 266h or 266i of the Penal~~
8 ~~Code or subdivision (b) of Section 647 of that code, or a provision~~
9 ~~involving any lesser included offense to which the defendant enters~~
10 ~~a plea of guilty or nolo contendere as part of a plea agreement~~
11 ~~subsequent to the defendant having been charged with a violation~~
12 ~~of Section 266h or 266i of the Penal Code or subdivision (b) of~~
13 ~~Section 647 of that code.~~

14 ~~(b) In addition to the authority provided by subdivision (h) of~~
15 ~~Section 22651, the ordinance may also include procedures to enjoin~~
16 ~~and abate the declared nuisance by ordering the defendant not to~~
17 ~~use the vehicle again for purposes of violating Section 266h or~~
18 ~~266i of the Penal Code or subdivision (b) of Section 647 of that~~
19 ~~code and authorizing the temporary impoundment of the vehicle~~
20 ~~that the court has declared a nuisance if the defendant violates the~~
21 ~~order. The impoundment shall not exceed 48 hours.~~

22 ~~(c) The only action that may be taken to enjoin and abate the~~
23 ~~declared nuisance are those actions specified in subdivision (b).~~

24 ~~(d) Any procedures implemented pursuant to this section shall~~
25 ~~ensure that no vehicle is declared a nuisance if the vehicle is stolen,~~
26 ~~unless it is not possible to reasonably ascertain the identity of any~~
27 ~~owner of the vehicle.~~

28 SEC. 2. Section 22659.5 is added to the Vehicle Code, to read:

29 22659.5. Notwithstanding any other provision of law, a city
30 or a county may adopt an ordinance declaring a motor vehicle to
31 be a public nuisance subject to seizure and 30-day impoundment
32 when the motor vehicle is used in the commission or attempted
33 commission of an act that violates Section 266h or 266i of, or
34 subdivision (b) of Section 647 of, the Penal Code, if the owner or
35 operator of the vehicle has had a prior conviction under one of
36 these provisions. The vehicle may only be impounded pursuant to
37 a valid arrest of the driver for a violation of one of these provisions.
38 An ordinance adopted pursuant to this section shall, at a minimum,
39 contain all of the following provisions:

1 (a) Within two working days after impoundment, the
2 impounding agency shall send a notice by certified mail, return
3 receipt requested, to the legal owner of the vehicle, at the address
4 obtained from the department, informing the owner that the vehicle
5 has been impounded. The notice shall also include notice of the
6 opportunity for a poststorage hearing to determine the validity of
7 the storage or to determine mitigating circumstances establishing
8 that the vehicle should be released. The impounding agency shall
9 be prohibited from charging for more than five days' storage if it
10 fails to notify the legal owner within two working days after the
11 impoundment when the legal owner redeems the impounded
12 vehicle. The impounding agency shall maintain a published
13 telephone number that provides information 24 hours a day
14 regarding the impoundment of vehicles and the rights of a legal
15 owner and a registered owner to request a hearing. The notice shall
16 include all of the following information:

17 (1) The name, address, and telephone number of the agency
18 providing the notice.

19 (2) The location of the place of storage and description of the
20 vehicle, that shall include, if available, the model or make, the
21 manufacturer, the license plate number, and the mileage.

22 (3) The authority and purpose for the removal of the vehicle.

23 (4) A statement that, in order to receive a poststorage hearing,
24 the owners, or their agents, shall request the hearing in person,
25 writing, or by telephone within 10 days of the date appearing on
26 the notice.

27 (b) The poststorage hearing shall be conducted within 48 hours
28 of the request, excluding weekends and holidays. The public
29 agency may authorize one of its own officers or employees to
30 conduct the hearing if that hearing officer is not the same person
31 who directed the seizure of the vehicle.

32 (c) Failure of the legal and the registered owners, or their agents,
33 to request or to attend a scheduled hearing shall satisfy the
34 poststorage hearing requirement.

35 (d) The agency employing the person who directed the storage
36 shall be responsible for the costs incurred for towing and storage
37 if it is determined in the poststorage hearing that reasonable
38 grounds for the storage are not established.

1 (e) Any period during which a vehicle is subjected to storage
2 under an ordinance adopted pursuant to this section shall be
3 included as part of the period of impoundment.

4 (f) The impounding agency shall release the vehicle to the
5 registered owner or his or her agent prior to the end of the
6 impoundment period under any of the following circumstances:

7 (1) The driver of the impounded vehicle was arrested without
8 probable cause.

9 (2) The vehicle is a stolen vehicle.

10 (3) The vehicle is subject to bailment and was driven by an
11 unlicensed employee of a business establishment, including a
12 parking service or repair garage.

13 (4) The driver of the vehicle is not the sole registered owner of
14 the vehicle and the vehicle is being released to another registered
15 owner of the vehicle who agrees not to allow the driver to use the
16 vehicle until after the end of the impoundment period.

17 (5) The registered owner of the vehicle was neither the driver
18 nor a passenger of the vehicle at the time of the alleged violation,
19 or was unaware that the driver was using the vehicle to engage in
20 activities subject to Section 266h or 266i of, or subdivision (b) of
21 Section 647 of, the Penal Code.

22 (6) A spouse, registered domestic partner, or other affected third
23 party objects to the impoundment of the vehicle on the grounds
24 that it would create a hardship if the subject vehicle is the sole
25 vehicle in a household. The hearing officer shall release the vehicle
26 where the hardship to a spouse, registered domestic partner, or
27 other affected third party created by the impoundment of the subject
28 vehicle, or the length of the impoundment, outweigh the
29 seriousness and the severity of the act in which the vehicle was
30 used.

31 (g) Notwithstanding any provision of law, if a motor vehicle is
32 released prior to the conclusion of the impoundment period because
33 the driver was arrested without probable cause, neither the arrested
34 person nor the registered owner of the motor vehicle is responsible
35 for towing and storage charges nor shall the motor vehicle be sold
36 to satisfy those charges.

37 (h) The registered owner or his or her agent shall be responsible
38 for all towing and storage charges related to the impoundment.

39 (i) A vehicle removed and seized under an ordinance adopted
40 pursuant to this section shall be released to the legal owner of the

1 vehicle or the legal owner's agent prior to the end of the
2 impoundment period if all of the following conditions are met:

3 (1) The legal owner is a motor vehicle dealer, bank, credit union,
4 acceptance corporation, or other licensed financial institution
5 legally operating in this state, or is another person who is not the
6 registered owner and holds a security interest in the vehicle.

7 (2) The legal owner or the legal owner's agent pays all towing
8 and storage fees related to the seizure and impoundment of the
9 vehicle.

10 (3) The legal owner or the legal owner's agent presents either
11 lawful foreclosure documents or an affidavit of repossession for
12 the vehicle, and a security agreement or title showing proof of
13 legal ownership for the vehicle.

14 (j) A legal owner, who meets the requirements for release of a
15 vehicle pursuant to subdivision (i), or the legal owner's agent, shall
16 not be required to request a poststorage hearing as a requirement
17 for release of the vehicle to the legal owner or the legal owner's
18 agent.

19 (k) (1) A legal owner, who meets the requirements for release
20 of a vehicle pursuant to subdivision (i), or the legal owner's agent,
21 shall not release the vehicle to the registered owner of the vehicle
22 or an agent of the registered owner, unless the registered owner is
23 a rental car agency, until after the termination of the impoundment
24 period.

25 (2) Prior to relinquishing the vehicle, the legal owner may
26 require the registered owner to pay all towing and storage charges
27 related to the seizure and impoundment.

28 (l) (1) A vehicle removed and seized pursuant to an ordinance
29 adopted pursuant to this section shall be released to a rental car
30 agency prior to the end of the impoundment period if the agency
31 is either the legal owner or registered owner of the vehicle and the
32 agency pays all towing and storage fees related to the seizure and
33 impoundment of the vehicle.

34 (2) The owner of a rental vehicle that was seized under an
35 ordinance adopted pursuant to this section may continue to rent
36 the vehicle upon recovery of the vehicle. However, the rental car
37 agency shall not rent another vehicle to the driver of the vehicle
38 that was seized until the impoundment period has expired.

- 1 (3) The rental car agency may require the person to whom the
- 2 vehicle was rented to pay all towing and storage charges related
- 3 to the seizure and impoundment.

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